

Message Text

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TO AMEMBASSY SOFIA

C O N F I D E N T I A L STATE 310643

E.O. 11652: GDS

TAGS: PFOR, CGEN, BU

SUBJECT: DIVIDED FAMILY CASES: REQUEST FOR LEGAL OPINION

REFS: (A) SOFIA 2667, (B) SOFIA 2639

1. DEPARTMENT LEGAL OFFICE HAS RESPONDED TO REQUEST FOR LEGAL OPINION CONCERNING THE STATUS OF FORMER BULGARIAN CITIZENS WHO EMIGRATED ILLEGALLY FROM BULGARIA AND WHO ARE NOW NATURALIZED AMERICAN CITIZENS. THEIR CONCLUSION IS THAT SUCH PERSONS ARE TO BE REGARDED AS AMERICAN CITIZENS ONLY AND NOT AS DUAL NATIONALS. THE BASIS FOR THIS CONCLUSION IS DISCUSSED BELOW.

2. UNDER S16 OF THE BULGARIAN NATIONALITY LAW OF 1968, A BULGARIAN CITIZEN MUST OBTAIN PRIOR RELEASE OF HIS BULGARIAN CITIZENSHIP BEFORE HE CAN ACQUIRE OR RETAIN ALIEN CITIZENSHIP.

3. THE U.S.-BULGARIAN NATURALIZATION TREATY OF 1923 WHICH HAS, SINCE ITS SUSPENSION DURING WORLD WAR II, BEEN CONFIDENTIAL

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REVIVED AND ACCEPTED BY THE PRESENT BULGARIAN GOVERNMENT, EXPRESSLY PROVIDES THAT "NATIONALS OF BULGARIA WHO HAVE BEEN OR SHALL BE NATURALIZED IN THE TERRITORY OF THE UNITED STATES SHALL BE HELD BY BULGARIA TO HAVE LOST

THEIR ORIGINAL NATIONALITY AND TO BE NATIONALS OF THE

UNITED STATES." (ARTICLE I, PARAGRAPH 2)

4. ARTICLE II OF THE 1923 TREATY PRESCRIBES THAT NATIONALS OF EITHER COUNTRY WHO HAVE OR SHALL BECOME NATURALIZED IN THE TERRITORY OF THE OTHER, AS CONTEMPLATED IN ARTICLE I, SHALL NOT, UPON RETURNING TO THE COUNTRY OF FORMER NATIONALITY, BE PUNISHABLE FOR THE ORIGINAL ACT OF EMIGRATION, OR FOR FAILURE, PRIOR TO NATURALIZATION, TO RESPOND TO CALLS FOR MILITARY SERVICE NOT ACCRUING UNTIL AFTER BONA FIDE RESIDENCE WAS ACQUIRED IN THE TERRITORY OF THE COUNTRY WHOSE NATIONALITY WAS OBTAINED BY NATURALIZATION.

5. THE PROVISIONS OF THE BULGARIAN DOMESTIC LAW CITED ABOVE, AND ARTICLE I OF THE BULGARIAN-U.S. NATURALIZATION TREATY OF 1923 ARE INCOMPATIBLE. IF BULGARIA TREATS A PERSON WHO, ALTHOUGH ORIGINALLY A BULGARIAN CITIZEN, HAS SINCE BECOME A NATURALIZED AMERICAN, AS STILL A BULGARIAN CITIZEN, BULGARIA IS IN DEROGATION OF ITS TREATY OBLIGATION WITH THE UNITED STATES.

6. NOTWITHSTANDING THE PROVISION IN THE BULGARIAN NATIONALITY LAW THAT A BULGARIAN CITIZEN CANNOT RETAIN ALIEN CITIZENSHIP UNLESS HE HAS OBTAINED A PRIOR RELEASE OF BULGARIAN CITIZENSHIP, THE TREATY PROVIDES NOT ONLY FOR AN AUTOMATIC LOSS OF BULGARIAN CITIZENSHIP WHEN A BULGARIAN CITIZEN BECOMES A NATURALIZED AMERICAN, BUT CONTEMPLATES THAT IN SO BECOMING AN AMERICAN CITIZEN, THE BULGARIAN CITIZEN MIGHT HAVE EMIGRATED ILLEGALLY. ARTICLE II OF THE TREATY SPECIFICALLY PROHIBITS BULGARIA

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FROM PUNISHING THE FORMER BULGARIAN CITIZEN (UPON HIS RETURN TO BULGARIA) FOR THE ORIGINAL ACT OF EMIGRATION. THIS PROVISION IN NO WAY DETRACTS FROM THE AUTOMATIC LOSS OF BULGARIAN CITIZENSHIP UPON HIS BECOMING A NATURALIZED AMERICAN CITIZEN AS PROVIDED FOR IN ARTICLE I.

7. IT IS THE LEGAL OPINION OF THE USG THAT FORMER BULGARIAN CITIZEN WHO EMIGRATED ILLEGALLY FROM BULGARIA AND WHO ARE NOW NATURALIZED AMERICAN CITIZENS ARE AMERICAN CITIZENS ONLY. THEY HAVE, PURSUANT TO ARTICLE I OF THE 1923 TREATY, AUTOMATICALLY LOST THEIR BULGARIAN CITIZENSHIP. THEY ARE NOT, THEREFORE, DUAL NATIONALS. THE UNITED STATES IS NOT OBLIGED TO ACCOMMODATE ITS RIGHTS UNDER INTERNATIONAL LAW, I.E., THE NATURALIZATION TREATY WITH BULGARIA, TO A SUBSEQUENT, INCOMPATIBLE BULGARIAN DOMESTIC LAW.

8. THE DEPARTMENT'S LEGAL OFFICE NOTES FOR THE EMBASSY'S

INFORMATION THAT UNDER SECTION 20 OF THE BULGARIAN CITIZENSHIP LAW, THE BULGARIAN GOVERNMENT MAY DEPRIVE A PERSON OF HIS BULGARIAN CITIZENSHIP FOR INTER ALIA: CROSSING THE BORDERS OF THE COUNTRY ILLEGALLY; AND ACQUIRING WHILE ABROAD AN ALIEN CITIZENSHIP IN VIOLATION OF THIS LAW. IT THUS APPEARS THAT BULGARIA POSSESSES THE LEGAL MEANS TO RESOLVE THE CONFLICT BETWEEN BULGARIAN DOMESTIC LAW AND HER TREATY OBLIGATIONS TO THE UNITED STATES. BULGARIA COULD CLARIFY THE INTERNAL LEGAL STATUS OF ORIGINAL BULGARIAN CITIZENS WHO BECOME NATURALIZED AMERICANS BY DEPRIVING SUCH PERSONS OF THEIR BULGARIAN CITIZENSHIP -- THUS MAKING THEIR INTERNAL STATUS CONFORM TO THEIR STATUS UNDER TREATY LAW. THE UNITED STATES DOES NOT HAVE THE LEGAL POWER TO SO RESOLVE THE IMPASS.

9. FYI: AS A RESULT OF RECENT U.S. COURT DECISIONS, THE UNITED STATES ITSELF MAY NOT BE ABLE TO COMPLY
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WITH THE REVERSE CASE UNDER ARTICLE I OF THE 1923 TREATY IN EVERY INSTANCE, SINCE THE ACT OF EXPATRIATION DOES NOT IN ALL CASES RESULT IN THE LOSS OF AMERICAN CITIZENSHIP. THIS FACT, WHILE NOT AFFECTING THE LEGAL ANALYSIS OR CONCLUSION ABOVE, MAY WARRANT A MORE CAUTIOUS APPROACH TO THE BULGARIANS. END FYI.

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